

Part 6

Default

70A-9a-601 Rights after default -- Judicial enforcement -- Consignor or buyer of accounts, chattel paper, payment intangibles, or promissory notes.

- (1) After default, a secured party has the rights provided in this part and, except as otherwise provided in Section 70A-9a-602, those provided by agreement of the parties. A secured party:
 - (a) may reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial procedure; and
 - (b) if the collateral is documents, may proceed either as to the documents or as to the goods they cover.
- (2) A secured party in possession of collateral or control of collateral under Section 70A-7a-106, 70A-9a-104, 70A-9a-105, 70A-9a-106, or 70A-9a-107 has the rights and duties provided in Section 70A-9a-207.
- (3) The rights under Subsections (1) and (2) are cumulative and may be exercised simultaneously.
- (4) Except as otherwise provided in Subsection (7) and Section 70A-9a-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.
- (5) If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:
 - (a) the date of perfection of the security interest or agricultural lien in the collateral;
 - (b) the date of filing a financing statement covering the collateral; or
 - (c) any date specified in a statute under which the agricultural lien was created.
- (6) A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this chapter.
- (7) Except as otherwise provided in Subsection 70A-9a-607(3), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles, or promissory notes.

Amended by Chapter 42, 2006 General Session

70A-9a-602 Waiver and variance of rights and duties.

Except as otherwise provided in Section 70A-9a-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

- (1) Subsection 70A-9a-207(2)(d)(iii), which deals with use and operation of the collateral by the secured party;
- (2) Section 70A-9a-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;
- (3) Subsection 70A-9a-607(3), which deals with collection and enforcement of collateral;
- (4) Subsections 70A-9a-608(1) and 70A-9a-615(3) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;
- (5) Subsections 70A-9a-608(1) and 70A-9a-615(4) to the extent that they require accounting for or payment of surplus proceeds of collateral;
- (6) Section 70A-9a-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

- (7) Subsection 70A-9a-610(2) and Sections 70A-9a-611, 70A-9a-613, and 70A-9a-614, which deal with disposition of collateral;
- (8) Subsection 70A-9a-615(6), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;
- (9) Section 70A-9a-616, which deals with explanation of the calculation of a surplus or deficiency;
- (10) Sections 70A-9a-620, 70A-9a-621, and 70A-9a-622, which deal with acceptance of collateral in satisfaction of obligation;
- (11) Section 70A-9a-623, which deals with redemption of collateral;
- (12) Section 70A-9a-624, which deals with permissible waivers; and
- (13) Sections 70A-9a-625 and 70A-9a-626, which deal with the secured party's liability for failure to comply with this chapter.

Enacted by Chapter 252, 2000 General Session

70A-9a-603 Agreement on standards concerning rights and duties.

- (1) The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in Section 70A-9a-602 if the standards are not manifestly unreasonable.
- (2) Subsection (1) does not apply to the duty under Section 70A-9a-609 to refrain from breaching the peace.

Enacted by Chapter 252, 2000 General Session

70A-9a-604 Procedure if security agreement covers real property or fixtures.

- (1) If a security agreement covers both personal and real property, a secured party may proceed:
 - (a) under this part as to the personal property without prejudicing any rights with respect to the real property; or
 - (b) as to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.
- (2) Subject to Subsection (3), if a security agreement covers goods that are or become fixtures, a secured party may proceed:
 - (a) under this part; or
 - (b) in accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.
- (3) Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.
- (4) A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

Enacted by Chapter 252, 2000 General Session

70A-9a-605 Unknown debtor or secondary obligor.

A secured party does not owe a duty based on its status as secured party:

- (1) to a person that is a debtor or obligor, unless the secured party knows:
 - (a) that the person is a debtor or obligor;
 - (b) the identity of the person; and
 - (c) how to communicate with the person; or
- (2) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (a) that the person is a debtor; and
 - (b) the identity of the person.

Enacted by Chapter 252, 2000 General Session

70A-9a-606 Time of default for agricultural lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

Enacted by Chapter 252, 2000 General Session

70A-9a-607 Collection and enforcement by secured party.

- (1) If so agreed, and in any event after default, a secured party:
 - (a) may notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;
 - (b) may take any proceeds to which the secured party is entitled under Section 70A-9a-315;
 - (c) may enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;
 - (d) if it holds a security interest in a deposit account perfected by control under Subsection 70A-9a-104(1)(a), may apply the balance of the deposit account to the obligation secured by the deposit account; and
 - (e) if it holds a security interest in a deposit account perfected by control under Subsection 70A-9a-104(1)(b) or (c), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.
- (2) If necessary to enable a secured party to exercise under Subsection (1)(c) the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:
 - (a) a copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and
 - (b) the secured party's sworn affidavit in recordable form stating that:
 - (i) a default has occurred with respect to the obligation secured by the mortgage; and
 - (ii) the secured party is entitled to enforce the mortgage nonjudicially.
- (3) A secured party shall proceed in a commercially reasonable manner if the secured party:
 - (a) undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

- (b) is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.
- (4) A secured party may deduct from the collections made pursuant to Subsection (3) reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.
- (5) This section does not determine whether an account debtor, bank, or other person obligated on collateral owes a duty to a secured party.

Amended by Chapter 225, 2013 General Session

70A-9a-608 Application of proceeds of collection or enforcement -- Liability for deficiency and right to surplus.

- (1) If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:
 - (a) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under Section 70A-9a-607 in the following order to:
 - (i) the reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
 - (ii) the satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and
 - (iii) the satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.
 - (b) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under Subsection (1)(a)(iii).
 - (c) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under Section 70A-9a-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.
 - (d) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.
- (2) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes, the debtor is not entitled to any surplus, and the obligor is not liable for any deficiency.

Enacted by Chapter 252, 2000 General Session

70A-9a-609 Secured party's right to take possession after default.

- (1) After default, a secured party:
 - (a) may take possession of the collateral; and
 - (b) without removal, may render equipment unusable and dispose of collateral on a debtor's premises under Section 70A-9a-610.
- (2) A secured party may proceed under Subsection (1):
 - (a) pursuant to judicial process; or

- (b) without judicial process, if it proceeds without breach of the peace.
- (3) If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

Enacted by Chapter 252, 2000 General Session

70A-9a-610 Disposition of collateral after default.

- (1) After default, a secured party may sell, lease, license, or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.
- (2) Every aspect of a disposition of collateral, including the method, manner, time, place, and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.
- (3) A secured party may purchase collateral:
 - (a) at a public disposition; or
 - (b) at a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.
- (4) A contract for sale, lease, license, or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.
- (5) A secured party may disclaim or modify warranties under Subsection (4):
 - (a) in a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or
 - (b) by communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.
- (6) A record is sufficient to disclaim warranties under Subsection (5) if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

Enacted by Chapter 252, 2000 General Session

70A-9a-611 Notification before disposition of collateral.

- (1) In this section, "notification date" means the earlier of the date on which:
 - (a) a secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or
 - (b) the debtor and any secondary obligor waive the right to notification.
- (2) Except as otherwise provided in Subsection (4), a secured party that disposes of collateral under Section 70A-9a-610 shall send to the persons specified in Subsection (3) a reasonable authenticated notification of disposition.
- (3) To comply with Subsection (2), the secured party shall send an authenticated notification of disposition to:
 - (a) the debtor;
 - (b) any secondary obligor; and
 - (c) if the collateral is other than consumer goods:
 - (i) any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

- (ii) any other secured party or lienholder that, 10 days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (A) identified the collateral;
 - (B) was indexed under the debtor's name as of that date; and
 - (C) was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and
 - (iii) any other secured party that, 10 days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Subsection 70A-9a-311(1).
- (4) Subsection (2) does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.
- (5) A secured party complies with the requirement for notification prescribed by Subsection (3)(c) (ii) if:
- (a) not later than 20 days or earlier than 30 days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in Subsection (3)(c)(ii); and
 - (b) before the notification date, the secured party:
 - (i) did not receive a response to the request for information; or
 - (ii) received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

Enacted by Chapter 252, 2000 General Session

70A-9a-612 Timeliness of notification before disposition of collateral.

- (1) Except as otherwise provided in Subsection (2), whether a notification is sent within a reasonable time is a question of fact.
- (2) In a transaction other than a consumer transaction, a notification of disposition sent after default and 10 days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

Enacted by Chapter 252, 2000 General Session

70A-9a-613 Contents and form of notification before disposition of collateral -- General.

Except in a consumer-goods transaction, the following rules apply:

- (1) The contents of a notification of disposition are sufficient if the notification:
 - (a) describes the debtor and the secured party;
 - (b) describes the collateral that is the subject of the intended disposition;
 - (c) states the method of intended disposition;
 - (d) states that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and
 - (e) states the time and place of a public disposition or the time after which any other disposition is to be made.
- (2) Whether the contents of a notification that lacks any of the information specified in Subsection (1) are nevertheless sufficient is a question of fact.
- (3) The contents of a notification providing substantially the information specified in Subsection (1) are sufficient, even if the notification includes:

- (a) information not specified by that subsection; or
- (b) minor errors that are not seriously misleading.
- (4) A particular phrasing of the notification is not required.
- (5) The following form of notification and the form appearing in Subsection 70A-9a-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To: [Name of debtor, obligor, or other person to which the notification is sent]

From: [Name, address, and telephone number of secured party]

Name of Debtor(s): [Include only if debtor(s) are not an addressee]

[For a public disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] [to the highest qualified bidder] in public as follows:

Day and Date: [Insert day and date]

Time: [Insert time]

Place: [Insert place]

[For a private disposition:]

We will sell [or lease or license, as applicable] the [describe collateral] privately sometime after [day and date].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, as applicable] [for a charge of \$[Insert amount]]. You may request an accounting by calling us at [telephone number].

Enacted by Chapter 252, 2000 General Session

70A-9a-614 Contents and form of notification before disposition of collateral -- Consumer-goods transaction.

In a consumer-goods transaction, the following rules apply:

- (1) A notification of disposition must provide the following information:
 - (a) the information specified in Subsection 70A-9a-613(1);
 - (b) a description of any liability for a deficiency of the person to which the notification is sent;
 - (c) a telephone number from which the amount that must be paid to the secured party to redeem the collateral under Section 70A-9a-623 is available; and
 - (d) a telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.
- (2) A particular phrasing of the notification is not required.
- (3) The following form of notification, when completed, provides sufficient information:

[Name and address of secured party]

[Date]

NOTICE OF OUR PLAN TO SELL PROPERTY

[Name and address of any obligor who is also a debtor]

Subject: [Identification of Transaction]

We have your [describe collateral], because you broke promises in our agreement.

[For a public disposition:]

We will sell [describe collateral] at public sale. A sale could include a lease or license.

The sale will be held as follows:

Date:

Time:

Place:

You may attend the sale and bring bidders if you want.

[For a private disposition:]

We will sell [describe collateral] at private sale sometime after [date]. A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [will or will not, as applicable] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [telephone number].

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [telephone number] [or write us at [secured party's address]] and request a written explanation. [We will charge you \$[insert amount] for the explanation if we sent you another written explanation of the amount you owe us within the last six months.]

If you need more information about the sale call us at [telephone number] [or write us at [secured party's address]].

We are sending this notice to the following other people who have an interest in [describe collateral] or who owe money under your agreement:

[Names of all other debtors and obligors, if any].

- (4) A notification in the form of Subsection (3) is sufficient, even if additional information appears at the end of the form.
- (5) A notification in the form of Subsection (3) is sufficient, even if it includes errors in information not required by Subsection (1), unless the error is misleading with respect to rights arising under this chapter.
- (6) If a notification under this section is not in the form of Subsection (3), law other than this chapter determines the effect of including information not required by Subsection (1).

Enacted by Chapter 252, 2000 General Session

70A-9a-615 Application of proceeds of disposition -- Liability for deficiency and right to surplus.

- (1) A secured party shall apply or pay over for application the cash proceeds of disposition under Section 70A-9a-610 in the following order to:
 - (a) the reasonable expenses of retaking, holding, preparing for disposition, processing, and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;
 - (b) the satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;
 - (c) the satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:
 - (i) the secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and
 - (ii) in a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and
 - (d) a secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

- (2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under Subsection (1)(c).
- (3) A secured party need not apply or pay over for application noncash proceeds of disposition under Section 70A-9a-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.
- (4) If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by Subsection (1) and permitted by Subsection (3):
 - (a) unless Subsection (1)(d) requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and
 - (b) the obligor is liable for any deficiency.
- (5) If the underlying transaction is a sale of accounts, chattel paper, payment intangibles, or promissory notes:
 - (a) the debtor is not entitled to any surplus; and
 - (b) the obligor is not liable for any deficiency.
- (6) The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:
 - (a) the transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and
 - (b) the amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.
- (7) A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:
 - (a) takes the cash proceeds free of the security interest or other lien;
 - (b) is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and
 - (c) is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

Enacted by Chapter 252, 2000 General Session

70A-9a-616 Explanation of calculation of surplus or deficiency.

- (1) In this section:
 - (a) "Explanation" means a writing that:
 - (i) states the amount of the surplus or deficiency;
 - (ii) provides an explanation in accordance with Subsection (3) of how the secured party calculated the surplus or deficiency;
 - (iii) states, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and
 - (iv) provides a telephone number or mailing address from which additional information concerning the transaction is available.

- (b) "Request" means a record:
 - (i) authenticated by a debtor or consumer obligor;
 - (ii) requesting that the recipient provide an explanation; and
 - (iii) sent after disposition of the collateral under Section 70A-9a-610.
- (2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under Section 70A-9a-615, the secured party shall:
 - (a) send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:
 - (i) before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and
 - (ii) within 14 days after receipt of a request; or
 - (b) in the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.
- (3) To comply with Subsection (1)(a)(ii), a writing must provide the following information in the following order:
 - (a) the aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:
 - (i) if the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession; or
 - (ii) if the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition;
 - (b) the amount of proceeds of the disposition;
 - (c) the aggregate amount of the obligations after deducting the amount of proceeds;
 - (d) the amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;
 - (e) the amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in Subsection (3)(a); and
 - (f) the amount of the surplus or deficiency.
- (4) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of Subsection (1) is sufficient, even if it includes minor errors that are not seriously misleading.
- (5) A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to Subsection (2)(a). The secured party may require payment of a charge not exceeding \$25 for each additional response.

Enacted by Chapter 252, 2000 General Session

70A-9a-617 Rights of transferee of collateral.

- (1) A secured party's disposition of collateral after default:
 - (a) transfers to a transferee for value all of the debtor's rights in the collateral;
 - (b) discharges the security interest under which the disposition is made; and

- (c) discharges any subordinate security interest or other subordinate lien.
- (2) A transferee that acts in good faith takes free of the rights and interests described in Subsection (1), even if the secured party fails to comply with this chapter or the requirements of any judicial proceeding.
- (3) If a transferee does not take free of the rights and interests described in Subsection (1), the transferee takes the collateral subject to:
 - (a) the debtor's rights in the collateral;
 - (b) the security interest or agricultural lien under which the disposition is made; and
 - (c) any other security interest or other lien.

Enacted by Chapter 252, 2000 General Session

70A-9a-618 Rights and duties of certain secondary obligors.

- (1) A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:
 - (a) receives an assignment of a secured obligation from the secured party;
 - (b) receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or
 - (c) is subrogated to the rights of a secured party with respect to collateral.
- (2) An assignment, transfer, or subrogation described in Subsection (1):
 - (a) is not a disposition of collateral under Section 70A-9a-610; and
 - (b) relieves the secured party of further duties under this chapter.

Enacted by Chapter 252, 2000 General Session

70A-9a-619 Transfer of record or legal title.

- (1) In this section, "transfer statement" means a record authenticated by a secured party stating:
 - (a) that the debtor has defaulted in connection with an obligation secured by specified collateral;
 - (b) that the secured party has exercised its post-default remedies with respect to the collateral;
 - (c) that, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and
 - (d) the name and mailing address of the secured party, debtor, and transferee.
- (2) A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration, or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:
 - (a) accept the transfer statement;
 - (b) promptly amend its records to reflect the transfer; and
 - (c) if applicable, issue a new appropriate certificate of title in the name of the transferee.
- (3) A transfer of the record or legal title to collateral to a secured party under Subsection (2) or otherwise is not of itself a disposition of collateral under this chapter and does not of itself relieve the secured party of its duties under this chapter.

Enacted by Chapter 252, 2000 General Session

70A-9a-620 Acceptance of collateral in full or partial satisfaction of obligation -- Compulsory disposition of collateral.

- (1) Except as otherwise provided in Subsection (7), a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:
 - (a) the debtor consents to the acceptance under Subsection (3);
 - (b) the secured party does not receive, within the time set forth in Subsection (4), a notification of objection to the proposal authenticated by:
 - (i) a person to which the secured party was required to send a proposal under Section 70A-9a-621; or
 - (ii) any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;
 - (c) if the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and
 - (d) Subsection (5) does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to Section 70A-9a-624.
- (2) A purported or apparent acceptance of collateral under this section is ineffective unless:
 - (a) the secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and
 - (b) the conditions of Subsection (1) are met.
- (3) For purposes of this section:
 - (a) a debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and
 - (b) a debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:
 - (i) sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;
 - (ii) in the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and
 - (iii) does not receive a notification of objection authenticated by the debtor within 20 days after the proposal is sent.
- (4) To be effective under Subsection (1)(b), a notification of objection must be received by the secured party:
 - (a) in the case of a person to which the proposal was sent pursuant to Section 70A-9a-621, within 20 days after notification was sent to that person; and
 - (b) in other cases:
 - (i) within 20 days after the last notification was sent pursuant to Section 70A-9a-621; or
 - (ii) if a notification was not sent, before the debtor consents to the acceptance under Subsection (3).
- (5) A secured party that has taken possession of collateral shall dispose of the collateral pursuant to Section 70A-9a-610 within the time specified in Subsection (6) if:
 - (a) 60% of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or
 - (b) 60% of the principal amount of the obligation secured has been paid in the case of a non-purchase-money security interest in consumer goods.
- (6) To comply with Subsection (5), the secured party shall dispose of the collateral:
 - (a) within 90 days after taking possession; or
 - (b) within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

- (7) In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

Enacted by Chapter 252, 2000 General Session

70A-9a-621 Notification of proposal to accept collateral.

- (1) A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:
- (a) any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;
 - (b) any other secured party or lienholder that, 10 days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:
 - (i) identified the collateral;
 - (ii) was indexed under the debtor's name as of that date; and
 - (iii) was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and
 - (c) any other secured party that, 10 days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in Subsection 70A-9a-311(1).
- (2) A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in Subsection (1).

Enacted by Chapter 252, 2000 General Session

70A-9a-622 Effect of acceptance of collateral.

- (1) A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:
- (a) discharges the obligation to the extent consented to by the debtor;
 - (b) transfers to the secured party all of a debtor's rights in the collateral;
 - (c) discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and
 - (d) terminates any other subordinate interest.
- (2) A subordinate interest is discharged or terminated under Subsection (1), even if the secured party fails to comply with this title.

Enacted by Chapter 252, 2000 General Session

70A-9a-623 Right to redeem collateral.

- (1) A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.
- (2) To redeem collateral, a person shall tender:
- (a) fulfillment of all obligations secured by the collateral; and
 - (b) the reasonable expenses and attorney's fees described in Subsection 70A-9a-615(1)(a).
- (3) A redemption may occur at any time before a secured party:
- (a) has collected collateral under Section 70A-9a-607;

- (b) has disposed of collateral or entered into a contract for its disposition under Section 70A-9a-610; or
- (c) has accepted collateral in full or partial satisfaction of the obligation it secures under Section 70A-9a-622.

Enacted by Chapter 252, 2000 General Session

70A-9a-624 Waiver.

- (1) A debtor or secondary obligor may waive the right to notification of disposition of collateral under Section 70A-9a-611 only by an agreement to that effect entered into and authenticated after default.
- (2) A debtor may waive the right to require disposition of collateral under Subsection 70A-9a-620(5) only by an agreement to that effect entered into and authenticated after default.
- (3) Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under Section 70A-9a-623 only by an agreement to that effect entered into and authenticated after default.

Enacted by Chapter 252, 2000 General Session

70A-9a-625 Remedies for secured party's failure to comply with chapter.

- (1) If it is established that a secured party is not proceeding in accordance with this chapter, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.
- (2) Subject to Subsections (3), (4), and (5), a person is liable for damages in the amount of any loss caused by a failure to comply with this chapter. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.
- (3) Except as otherwise provided in Section 70A-9a-628:
 - (a) a person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under Subsection (2) for its loss; and
 - (b) if the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus 10% of the principal amount of the obligation or the time-price differential plus 10% of the cash price.
- (4) A debtor whose deficiency is eliminated under Section 70A-9a-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 70A-9a-626 may not otherwise recover under Subsection (2) for noncompliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.
- (5) In addition to any damages recoverable under Subsection (2), the debtor, consumer obligor, or person named as a debtor in a filed record, as applicable, may recover \$500 in each case from a person that:
 - (a) fails to comply with Section 70A-9a-208;
 - (b) fails to comply with Section 70A-9a-209;
 - (c) files a record that the person is not entitled to file under Subsection 70A-9a-509(1);
 - (d) fails to cause the secured party of record to file or send a termination statement as required by Subsection 70A-9a-513(1) or (3);

- (e) fails to comply with Subsection 70A-9a-616(2)(a) and whose failure is part of a pattern, or consistent with a practice, of noncompliance; or
 - (f) fails to comply with Subsection 70A-9a-616(2)(b).
- (6) A debtor or consumer obligor may recover damages under Subsection (2) and, in addition, \$500 in each case from a person that, without reasonable cause, fails to comply with a request under Section 70A-9a-210. A recipient of a request under Section 70A-9a-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this Subsection (6).
- (7) If a secured party fails to comply with a request regarding a list of collateral or a statement of account under Section 70A-9a-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

Enacted by Chapter 252, 2000 General Session

70A-9a-626 Action in which deficiency or surplus is in issue.

- (1) In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:
- (a) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition, or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.
 - (b) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition, or acceptance was conducted in accordance with this part.
 - (c) Except as otherwise provided in Section 70A-9a-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:
 - (i) the proceeds of the collection, enforcement, disposition, or acceptance; or
 - (ii) the amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance.
 - (d) For purposes of Subsection (1)(c)(ii), the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses, and attorney's fees unless the secured party proves that the amount is less than that sum.
 - (e) If a deficiency or surplus is calculated under Subsection 70A-9a-615(6), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.
- (2) The limitation of the rules in Subsection (1) to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

Enacted by Chapter 252, 2000 General Session

70A-9a-627 Determination of whether conduct was commercially reasonable.

- (1) The fact that a greater amount could have been obtained by a collection, enforcement, disposition, or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition, or acceptance was made in a commercially reasonable manner.
- (2) A disposition of collateral is made in a commercially reasonable manner if the disposition is made:
 - (a) in the usual manner on any recognized market;
 - (b) at the price current in any recognized market at the time of the disposition; or
 - (c) otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.
- (3) A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:
 - (a) in a judicial proceeding;
 - (b) by a bona fide creditors' committee;
 - (c) by a representative of creditors; or
 - (d) by an assignee for the benefit of creditors.
- (4) Approval under Subsection (3) need not be obtained, and lack of approval does not mean that the collection, enforcement, disposition, or acceptance is not commercially reasonable.

Enacted by Chapter 252, 2000 General Session

70A-9a-628 Nonliability and limitation on liability of secured party -- Liability of secondary obligor.

- (1) Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person, and knows how to communicate with the person:
 - (a) the secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this chapter; and
 - (b) the secured party's failure to comply with this chapter does not affect the liability of the person for a deficiency.
- (2) A secured party is not liable because of its status as secured party:
 - (a) to a person that is a debtor or obligor, unless the secured party knows:
 - (i) that the person is a debtor or obligor;
 - (ii) the identity of the person; and
 - (iii) how to communicate with the person; or
 - (b) to a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:
 - (i) that the person is a debtor; and
 - (ii) the identity of the person.
- (3) A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:
 - (a) a debtor's representation concerning the purpose for which collateral was to be used, acquired, or held; or
 - (b) an obligor's representation concerning the purpose for which a secured obligation was incurred.

- (4) A secured party is not liable to any person under Subsection 70A-9a-625(3)(b) for its failure to comply with Section 70A-9a-616.
- (5) A secured party is not liable under Section 70A-9a-625(3)(b) more than once with respect to any one secured obligation.

Enacted by Chapter 252, 2000 General Session